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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/737,019

12/16/2003

Charles M. Mettler

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09/13/2005

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EXAMINER

STERLING, AMY JO

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,019

Applicant(s)

METTLER ET AL.

Examiner

Amy J. Sterling

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,11-20,22-25,27-30 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35 is/are allowed.
- 6) ☒ Claim(s) 1-4,11-17,22-25,29,30,33,34 and 36 is/are rejected.
- 7) ☒ Claim(s) 5,6,8,18-20,27,28 and 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the **Final Office Action** for application number 10/737,019 Base Support for Post or Other Upright, filed on 12/16/03. Claims 1-6, 8, 11-20, 22-25, 27-30, 32-36 are pending. This **Final Office Action** is in response to applicant's reply dated 6/20/05. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

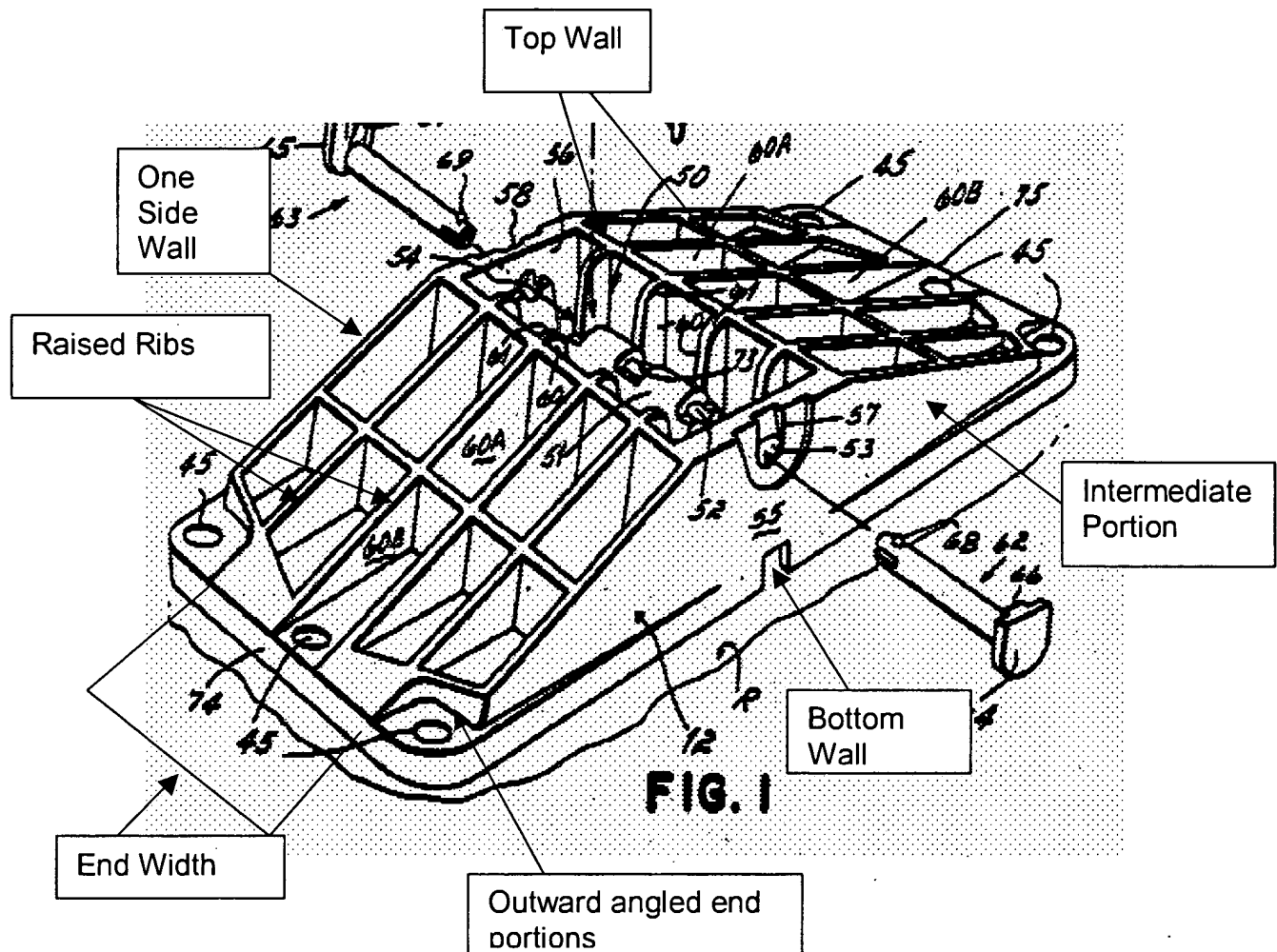
Claims 1-6, 8, 11-20, 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, "the mounting hole having a width that extends widthwise inwardly and outwardly of the end lengths of just the other side wall..." and it is unclear what is meant by this phrase.

Claim Rejections - 35 USC § 102

Claims 1-3, 15 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4596489 to Mariol et al.

The patent to Mariol et al. teaches a molded plastic base support (See Col. 4 lines 39-45 and Col. 5, line 53, for material) for supporting an elongated member in a substantially upright position having a base member (10) having a greater length than width and spaced apart bottom and top walls and opposite side walls (55), one of the side walls being substantially straight and in substantially the same plane throughout its length, and the other of the side walls having an intermediate length that is spaced further from the plane of the one side wall than end lengths of the other side wall to provide the base member with a at least doubly wider intermediate width than end widths, and a substantially square non-circular cross-sectional shaped mounting hole (50) extending through the top wall in the wider intermediate width, the mounting hole having a width that extends widthwise inwardly and outwardly of the end lengths of just the other side wall and less than the intermediate width of the base member, wherein the end walls are in substantial alignment with each other in a parallel spaced relation from the one side wall and the mounting hole has a center that extends in a direction substantially perpendicular to an intermediate length of the top wall and is substantially in the same plane as the end lengths of the other sides wall which is substantially perpendicular to the intermediate length of the top wall. There is a horizontal plane that passes through the mounting hole center and through all the end lengths. Mariol et al. also discloses wherein the intermediate length of the other side wall has outwardly angled end portions adjacent opposite sides of the mounting hole extending toward each other and an intermediate portion extending between the end portions in parallel spaced relation to one side wall.



Mariol et al. also discloses wherein the mounting hole has a plurality of laterally spaced longitudinally extending ribs (60) around the entire periphery of the mounting hole that are axially transversely rounded and wherein the top wall has a plurality of axially spaced apart stacking ribs (See Drawing Above) and the bottom wall has corresponding recesses (89, 90) for receipt of the stacking ribs.

Claim Rejections - 35 USC § 103

Claims 4, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. as applied to claim 1 above and in view of United states Patent No. 4275535 to Stalzer.

Mariol et al. teaches the basic inventive concept as shown above with the exception that it does not teach wherein the substantially square mounting hole extends completely through the base member.

Stalzer shows a base member (1) for supporting an elongated member having a substantially square hole (3) which extend completely through the base, used in order to be able to extend the elongated member into the ground, if so desired. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Stalzer to have had the hole extend completely through the base member, in order to be able to extend the elongated support into the ground.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. as applied to claim 1 above and in view of United states Patent No. 5356108 to Stagl et al.

Mariol et al. teaches the basic inventive concept as shown above and including that the top wall of the base member has angled surfaces that slope outwardly toward the bottom wall adjacent opposite ends of the base member. Mariol et al. does not

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teach wherein the base member is substantially hollow and has a fill hole in one of the angled surfaces adjacent one end.

Stagl et al. teaches a weighted base, (12), for holding post (16) wherein the base is substantially hollow and has a fill hole (48) adjacent to one end for filling the base member with flowable ballast material (66), used to weight the base (12) and post (16) won't tip over. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Stagl et al. to have made the device hollow with a fill hole in order to weight the base, so that it will not tip over.

Claims 11, 14 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United states Patent No. 5356108 to Stagl et al. as applied to claims 1 and 8 above and further in view of United States Patent No. 6659681 to Kulp et al.

Mariol et al. and Stagl et al. teach the basic inventive concept including wherein Mariol et al. teaches wherein the base member has thinned out non-hollow solid end portions and wherein the top wall of the ends portions has raised ribs (See Drawing Above) to provide increased strength at the end portions. Mariol et al. and Stagl et al. do not teach wherein annular anti-skid pads the pads having a diameter greater than the width of the end portions and are attached to the bottom wall end portions.

Kulp et al. teaches a weighted base (314), which has annular anti-skid pads (386) which are attached to the bottom wall end portions of the base (314), used in order to keep the device from unintentional moving. Though Kulp et al. does not teach

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that the diameter is larger than the end portions, this configuration would be an obvious permutation of having anti-skid pads because it would be obvious to have them larger for more friction. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Mariol et al. and Stagl et al. to have added anti-skid pads, in order to keep the device from moving unintentionally.

Claims 12 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United States Patent No. 5356108 to Stagl et al. and in view of United States Patent No. 6659681 to Kulp et al. as applied to claims 1, 8 and 11 above and further in view of United States Patent Publication No. 2004/0025899 to Pinsky.

Mariol et al., Stagl et al. and Kulp et al. teach the basic inventive concept with the exception that they do not teach wherein the bottom wall has arcuate recesses at the end portions in which the anti-skid pads are received.

Pinsky shows a base which has anti-skid pads (309) which are located in recesses (See Fig. 5), it would be obvious to have the recesses correspond with the shape of the anti-skid pad in order to be able to easily locate the pads during mounting. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Pinsky to have had recesses in the base in order to easily place the pads while mounting the pads.

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Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United states Patent No. 5356108 to Stagl et al. and in view of United States Patent No. 6659681 to Kulp et al. as applied to claims 1, 8 and 11 above and further in view of United States Patent 5467977 to Beck.

Mariol et al., Stagl et al. and Kulp et al. teach the basic inventive concept with the exception that they do not teach wherein the anti-skid pads are stapled to the bottom wall at the end portions.

Beck teaches a base, which has end wall portions (4, 7) which has anti-skid pads attached to the device at the end portions with staples (17), the staples used to firmly secure the pads to the device. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Beck to have stapled the anti-skid pads to the ends of the wall portions in order to firmly adhere the pads to the desired device.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. as applied to claim 1 above and in view of United states Patent No. 5377976 to Matherne et al.

Mariol et al. teaches the basic inventive concept with the exception that it does not teach a carrying handle on an exterior side wall of the base member.

Matherne et al. teaches a base member with a side wall (18) that has a carrying handle on an exterior of the side wall, used to aid in moving the device to a desired

location. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Matherne et al. to have added an exterior handle in order to help in moving the base member.

Response to Arguments

The applicant has argued that the side walls do not meet the limitation of having one substantially straight and substantially in the same plane and having one with an intermediate length that is spaced further from the plane of the one side wall than end lengths of the other side wall. This is unpersuasive in that the term substantially means that the device had to "primarily" read on the limitation and Mariol et al. does this. The first side wall is considered the opposite of (55) which is substantially straight and in the same plane, the other side wall is the tapered portions of the ends which are substantially straight and the intermediate length is considered portion (55) as clearly indicated in the marked figure above.

The applicant has also argued that the mounting hole has a center that extends in a direction substantially perpendicular to an intermediate length of the top wall. This is met as well clearly shown in the rejection above.

The argument pertaining to claims 5 and 6 is persuasive see below.
The applicant has argued that it would not be obvious to have a hole shaped and sized to accommodate a similarly shaped end portion of an elongated member and to have

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the hole therethrough. This is unpersuasive in that this technology was well within the knowledge of those skilled in the art at the time of the invention.

Allowable Subject Matter

Claims 5, 6, 8 18-20, 27, 28 and 32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 35 is allowed.

The reason is that the prior art does not teach wherein the mounting hole is substantially square shaped with four sides and has longitudinally extending ribs on all four sides and that the carrying handle extends axially from the exterior of one end portion of the intermediate length of the of the other side wall and along an exterior portion of one of the end length of the other side wall. The reason is that the prior art does not teach wherein the base member is substantially hollow and has a fill hole in one of the angled surfaces of the top wall adjacent one end.


Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.


AJS

Amy J. Sterling
8/19/05


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PRIMARY EXAMINER